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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,215	12/29/2000	Hyon Chang Lim	0630-1203P	6996

7590 06/28/2006

BIRCH, STEWART, KOLASCH & BIRCH, LLP
P.O. Box 747
Falls Church, VA 22040-0747

EXAMINER

LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,215

Applicant(s)

LIM, HYON CHANG

Examiner

Arrienne M. Lezak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-9 and 12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4-9 and 12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Examiner notes that Claims 1, 4, 7, 9 & 12 have been amended, no Claims have been added and Claims 2, 3, 10, 11, 13 & 14 have been cancelled. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 1 December 2005 as reiterated herein below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-9 & 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over extensive consideration of US Patent US 6,516,350 B1 to Lumelsky in view of US Patent US 6,484,257 B1 to Ellis.

3. Regarding Claims 1, 4-9 & 12, Lumelsky teaches a method and apparatus of maximizing the number of sessions according to an operating situation of a server for a multimedia service in a network environment in which a server and a plurality of clients are connected with each other and the server, (comprising an application program, an OS and a network connection - per pending Claim 5), dynamically decides whether to

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provide or not provide multimedia service sessions according to a request of a client, (Abstract), comprising:

- a service requesting step in which one of a plurality of clients requests a multimedia service from the server, (Col. 15, lines 32-40);
- a capability negotiation step comprising a management capability, (per pending Claim 8), (Col. 5, lines 12-36), for (1) evaluating an available amount of a CPU and a memory of the server, (Fig. 10; Col. 12, lines 26-52; Col. 15, lines 32-67 and Col 16, lines 1-22);
- (2) evaluating an available amount of a bandwidth of a network connecting the server and the clients, (Fig. 10; Col. 12, lines 26-52; Col. 15, lines 32-67 and Col 16, lines 1-22);
- (3) evaluating an available amount of a CPU and a memory of the one client, (Fig. 10; Col. 12, lines 26-52; Col. 15, lines 32-67 and Col 16, lines 1-22);
- in which it is evaluated whether the server is to generate a session to provide a multimedia service according to the request by the one client, (Col. 15, lines 32-67 and Col 16, lines 1-22), (Examiner notes that the generation of a new session by a server, for any particular client or number of clients, would have been obvious in light of the teachings of Lumelsky as a means by which any client(s) on the network would have access to any network

resource(s) on request, per adaptive resource management, (Col. 5, lines 7-10));

- generating the new session in case that the resources of the server, the one client and the network are available after being evaluated, (Fig. 10; Col. 12, lines 26-52; Col. 15, lines 32-67 and Col 16, lines 1-22);
- service providing step in which the server provides a multimedia (or text – per pending Claim 6) service to one of the clients through the capability negotiation, (Col. 15, lines 32-67 and Col 16, lines 1-22); and
- wherein the number of sessions according to the operating situation of a server for a multimedia service in a network environment is maximized, (Fig. 10; Col. 12, lines 26-52; Col. 15, lines 32-67 and Col 16, lines 1-22), (Examiner notes that per Applicant's specification, p. 6-8, the server can effectively provide multimedia service at the "maximum" of the sessions based upon the capability negotiation as noted herein above. As the prior art clearly and obviously teaches each and every capability negotiation step, by default, the prior art would teach effectively providing multimedia service at the "maximum" of the sessions, per Applicant's definition of the same).

4. Examiner notes that Applicant has added claim language indicating that the service providing step is performed “without predetermining the number of sessions provided by the server to clients”, and Examiner finds that Lumelsky does not require “predetermining the number of sessions” for any purpose, and as such obviously reads upon Applicant’s amended claim language. Lumelsky specifically relies on the use of policies to make determinations, (Lumelsky – Col. 5, lines 37-48), which policies could be any policies used in capability negotiation, and which capability negotiation is well-known to be determined in a plethora of different ways, thus, not specifically requiring the predetermination of session number for the same.

5. That noted, Examiner additionally provides the Ellis reference which teaches the determination of a new session based on current available processor bandwidth, (Ellis – Col. 7, lines 11-67; Col. 8, lines 1-26; & Claims 1-10), wherein a determination based on current available processor bandwidth is not equivalent to a determination based on a predetermination of the number of sessions provided by the server to clients, and as such, renders Applicant’s claims unpatentable. Additionally, Examiner notes that Ellis clearly provides for the determination of a “new session”, as noted herein above. The motivation to combine Lumelsky and Ellis is found within Lumelsky which notes a need for a coordinated management of overall system resources as a function of request activities for individual content and computing resources, (Lumelsky – Col. 4, lines 56-65 & Col. 5, lines 22-25). Clearly Ellis provides a specific means by which processor resources and client requests are determinative of new session generation via a

management functionality, which specific means is obviously representative of a policy/property, as noted within Lumelsky.

6. Examiner further notes that Ellis further teaches a service session refusal step wherein the server refuses to generate a new session if the allocated resources are not receivable even in one of the capability negotiation steps (1)-(3), (Ellis - Col. 7, lines 11-67; Col. 8, lines 1-26; & Claims 1-10). Examiner additionally finds that Ellis clearly teaches wherein insufficient resources determine acceptance of new client sessions, and thus, in light of the fact that those factors relied upon by Applicant for said determination are all well-known and necessary resources, Examiner finds that the absence of any individual resource would obviously create an "insufficient resource" situation thereby denying acceptance of a new client session. Thus Claims 1, 4-9 & 12 are found to be unpatentable over the combined teachings of Lumelsky and Ellis.

Response to Arguments

7. Applicant's arguments filed 29 March 2006, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made.

8. Applicant's arguments include the failure of previously applied art to expressly disclose "a service requesting step in which one of the plurality of client requests a multimedia service from the server". It is evident from the detailed mappings found in

the above rejection(s) that Lumelsky discloses this functionality, as Examiner notes that the "service control plane" (SCP) is obviously a computer resource, (per its various negotiating and processing capabilities), and as such would obviously be read to be incorporated within a server environment, particularly in this case wherein Lumelsky teaches the SCP providing control and management of the server-side resources. Further, it is clear from prior art that server-side load-balancing and redirection was widely implemented in the networking art and further incorporates software capable of being implemented on a single server or any number of servers in a group which server, (or group of servers) would obviously be capable of receiving and negotiating requests from any number of clients. Thus, Examiner finds, (per Fig. 4), that the SCP can be incorporated within any server and still perform its designated functionalities, which functionalities clearly render Applicant's invention obvious. Thus, Applicant's arguments drawn toward distinction of the claimed invention and the prior art teachings on this point are not considered persuasive.

9. Examiner has addressed Applicant's arguments regarding the generation of a "new session" as noted herein with regard to the combined teachings of Lumelsky and Ellis. Additionally, Examiner notes that Applicant's additional limitation of session generation "without predetermining the number of sessions provided by the server to the clients" simply allows any teachings which perform the same functionality, (session generation), by an alternate means, (i.e.: bandwidth determination), to read upon and overcome Applicant's claims as written. Moreover, Examiner notes that nowhere in Applicant's amendment has Applicant indicated that Lumelsky specifically performs the

functionality of session negotiation/generation by means of predetermining the number of sessions provided by the server to the clients, and as such, Applicant has not shown that Lumelsky does not read on Applicant's claims as amended.

10. Regarding Applicant's argument that the prior art does not teach "maximizing the number of sessions according to the operating session of a server", Examiner again notes that per Applicant's specification, p. 6-8, the server can effectively provide multimedia service at the "maximum" of the sessions based upon the capability negotiation as noted herein above. As the prior art clearly and obviously teaches each and every capability negotiation step, by default, the prior art would teach effectively providing multimedia service at the "maximum" of the sessions, per Applicant's definition of the same. Additionally, Applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, as noted herein, the combined prior art teachings are clearly, obviously and by default, capable of performing the intended use of "providing multimedia service at the "maximum" of the sessions according to the operating session of a server", and thus read upon Applicant's claimed invention rendering the same unpatentable.

11. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner again emphasizes that it is the combined teachings of Lumelsky and Ellis that clearly and obviously render Applicant's claimed invention unpatentable.

12. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as noted herein, Examiner has provided proper and sufficient motivation for combining the references.

13. In response to applicant's argument that the Office Action does not explain how Lumelsky is to be modified, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Examiner finds that one of ordinary skill in the art would have known to incorporate the Ellis features into the Lumelsky system, per the motivation noted herein.

14. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Examiner finds that one of ordinary skill in the art would have known to incorporate the Ellis features into the Lumelsky system, per the motivation noted herein.

15. Examiner has addressed Applicant's Amendment, and has further rejected all claims, as noted herein above. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

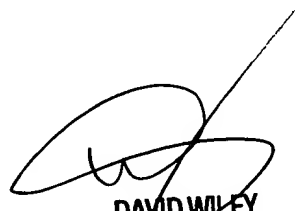
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
Examiner
Art Unit 2143

AML


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100